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OFFICE OF PETITIONS

In re Application of
Finocchio, Richard
Application No. 10/770,892
Filed: February 2, 2004
Attorney Docket No. 12406/81

ON PETITION

This is a decision on the petition under 37 CFR 1.181, filed September 4, 2007, requesting the withdrawal of the holding of abandonment in the above-identified application and has been so treated.

The petition to withdraw the holding of abandonment is **GRANTED**.

Petitioner states that the reply was in fact timely filed. To support this assertion, petitioner has submitted a copy of the return postcard, which acknowledges receipt by the U.S. Patent and Trademark Office (USPTO) on July 19, 2007 of 1. Request for Continued Examination (RCE); 2. Amendment; and 3. an Extension Request. Additionally, petitioner has supplied a copy of the previously mailed correspondence, which bears a certificate of mailing date of July 16, 2007.

The reply acknowledged as having been received in the USPTO on July 19, 2007 (certificate of mailing date of July 16, 2007) is not of record in the application file and cannot be located. However, MPEP 503 states that "A post card receipt which itemizes and properly identifies the items which are being filed serves as *prima facie* evidence of receipt in the USPTO of all the items listed thereon on the date stamped thereon by the USPTO." Accordingly, it is concluded that the reply was timely received in the USPTO but was apparently lost after receipt thereof.

Further, a review of USPTO financial records indicates that the RCE and 5-month extension of time fees were collected on July 19, 2007 from Deposit Account No. 11-0600.

In view of the above, the holding of abandonment is hereby withdrawn and the application restored to pending status.

A petition to withdraw the holding of abandonment under the provisions of 37 CFR 1.181 does not require a fee and none has been charged.

This matter is being referred to Technology Center AU 3711 for processing of the Request for Continued Examination under 37 CFR 1.114 filed with the instant petition.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3206.

Liana Walsh
Petitions Examiner
Office of Petitions